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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/867,495	05/31/2001	Todd Anderson	IAC011	9064

7590 09/04/2002
Joseph H. McGlynn
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EXAMINER

BRITTAIN, JAMES R

ART UNIT	PAPER NUMBER
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3677

DATE MAILED: 09/04/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/867,495

Applicant(s)

ANDERSON, TODD

Examiner

James R. Brittain

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4 and 5 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 4 and 5 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ 6) ☐ Other: ____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Vasilopoulos (US 5722125) in view of Thurston (US 1195874).

Vasilopoulos (figure 2) teaches fastener structure comprising one bungee cord 30 (col. 2, line 4; col. 3, line 39) with a hook 50 at a first end and an alligator clip 92 (col. 4, line 55) at the second end. The alligator clip appears to have teeth, a pivot pin and is biased (col. 4, line 58). The alligator clip is fully capable of being utilized to secure the second end of the bungee cord to a support. The difference is that it is not stated that the clip has a pivot pin and the spring is not shown as wound around the pivot with the spring having a pair of arms with an arm engaging an outside surface of each jaw. However, Thurston (figures 2, 3) teaches the use of such a clip secured to a tether with a pivot pin 5 and a spring 6 having a pair of arms extending over the outside surfaces of the jaws so as to better engage the secured material. It would have been obvious to modify the fastener of Vasilopoulos to utilize such a well known configuration for an alligator clip at the end of a resilient cord in view of Thurston (figures 2, 3) teaching the use of such a clip with a pivot pin 5 and a spring 6 having a pair of arms extending over the outside surfaces of the jaws so as to better engage the secured material.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Vasilopoulos (US 5722125) in view of Thurston (US 1195874) as applied to claim 1 above, and further in view of De Witt (US 2931084).

Further modification of the fastener of Vasilopoulos such that the teeth extend across the inside surface of the jaws would have been obvious in view of De Witt (figures 3, 4) in which the inside surfaces of the jaws 25 have ridges 26 extending across their inside surfaces so as to enhance the gripping across the entire inside surface.

Response to Arguments

Applicant's arguments filed June 27, 2002 have been fully considered but they are not persuasive.

The limitation "means for securing said second end to a support" (claim 5, line 4-5) language does not invoke 35 U.S.C. 112, sixth paragraph because the phrase has been modified by detailed claimed structure for achieving the specified function. The passage "said means for securing said second end to a support comprising a first and second jaw" (claim 5, lines 6-7) and following to the end of the claim provides detailed structure of the clamp that is the means for securing the second end to a support. See MPEP 2181. The limitation has the weight of a statement of intended use.

In response to applicant's argument that Vasilopoulos does not disclose a "means for securing said second end to a support" (page 5, ¶1), the limitation is only accorded the status of intended use and does not invoke 35 U.S.C. 112, sixth paragraph for the reason given above and a recitation of the intended use of the

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claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James R. Brittain whose telephone number is 703-308-2222. The examiner can normally be reached on Monday - Friday from 5:30 to 2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on 703-308-3179. The fax phone numbers for

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the organization where this application or proceeding is assigned are 703-305-7687 for regular communications and 703-305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

A handwritten signature in black ink, appearing to read 'J.R. Brittain', with a stylized flourish at the end.

James R. Brittain
Primary Examiner
Art Unit 3626

JRB
September 3, 2002